

3-23-2008

# Rammell v. Idaho State Dept. of Agriculture Clerk's Record v. 2 Dckt. 34927

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Supreme Court No. 32538  
Volume No. 1

32538

lc-030  
COPY

IN THE  
SUPREME COURT  
OF THE 2  
STATE OF IDAHO

REX RAMMELL, LYNDA  
RAMMELL, dba ELK  
COUNTRY TROPHY BULLS

PLAINTIFF  
And  
APPELLANT

Vs

IDAHO STATE DEPARTMENT  
OF AGRICULTURE

DEFENDANT  
And  
RESPONDENT

*Appealed from the District Court of the Seventh Judicial  
District of the State of Idaho, in and for Madison County*

*Honorable BRENT J. MOSS District Judge*

*Pro-Se  
Dr. Rex Rammell  
490 Pioneer Rd. Apt 6105  
Rexburg, ID 83440*

*Attorney for Appellant*

*Brian J. Oakey  
Idaho State Department of Agriculture  
PO Box 790  
Boise, ID 83701-0790*

*Attorney for Respondent*

FILED - COPY

, 2006

IN THE SUPREME COURT OF THE STATE OF IDAHO

REX RAMMELL, LYNDA RAMMELL  
dba ELK COUNTRY TROPHY BULLS

PLAINTIFF-  
APPELLANTS

VS

IDAHO STATE DEPARTMENT OF  
AGRICULTURE

DEFENDANT-  
RESPONDENT

SUPREME COURT NO. 32538

CASE NO. CV-05-438

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the 7th Judicial District of the State of Idaho, in and for  
THE  
COUNTY OF MADISON

BRENT J. MOSS  
DISTRICT JUDGE

ATTORNEY  
FOR APPELLANT

PRO-SE  
DR. REX RAMMELL  
490 PIONEER RD. APT. 6105  
REXBURG, ID 83440

ATTORNEY  
FOR RESPONDENT

BRIAN J. OAKLEY  
IDAHO STATE DEPARTMENT OF AGRICULTURE  
PO BOX 790  
BOISE, ID 83701-0790

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FILED DECEMBER 6, 2005

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ORDER  
FILED JANUARY 9, 2006

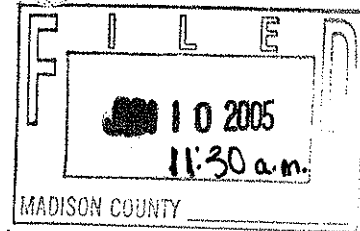
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FOR JUDICIAL REVIEW  
FILED SEPTEMBER 29, 2005

SUPREME COURT LETTER 59  
FILED DECEMBER 6, 2005



Dr. Rex Rammell  
1365 West 5500 South  
Rexburg, Idaho 83440  
(208) 356-3690

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF  
IDAHO, IN AND FOR THE COUNTY OF FREMONT

REX RAMMELL and LYNDA  
RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS,

Petitioners,

vs.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

Case. No. CV-05- 438

PETITION FOR JUDICIAL REVIEW

COMES NOW, the Petitioners, REX RAMMELL and LYNDA RAMMELL, d/b/a ELK COUNTRY TROPHY BULLS, (hereinafter "Elk Country"), and pursuant to Idaho Code Sections, 67-5270 and 67-5272, hereby petition the Court for a review of that certain Final Order of the Deputy Director and the underlying Findings of Fact, Conclusions of Law and regulatory and statutory authority of the matter previously heard before the Idaho Department of Agriculture and more particularly identified as Case No. M03-02-04-1130DC. In support of its Petition, Elk Country alleges as follows:



1. Rex Rammell and Lynda Rammell, d/b/a ELK COUNTRY TROPHY BULLS, are residents of the State of Idaho, County of Madison. The Rammells own and operate an elk ranch.

2. The Idaho State Department of Agriculture (hereinafter "ISDA") is a governmental agency in the state of Idaho and is statutorily charged with regulating elk ranching within the state under a specific and limited grant of authority.

3. This Court has jurisdiction to hear the matter pursuant to Idaho Code §§ 67-5270, et seq.

4. ISDA filed an Administrative Complaint against Elk Country in June 2004. After an exhaustive administrative proceeding, ISDA prevailed in the administrative proceeding and fines were levied against Elk Country in the amount of \$29,000. Additionally, attorney fees and costs in excess of \$29,000 are being sought against Elk Country pursuant to I.C. § 12-117.

5. Having exhausted all administrative remedies, Elk Country is now entitled to a review of this matter by the District Court. Elk Country hereby requests that a certified copy of the agency record be prepared and submitted for review.

6. Preliminarily, the issues for which Elk Country seeks review are:

a) Whether the ISDA's actions were in violation of constitutional provisions of the State and Federal Constitutions, including without limitation, rights of due process, just compensation, equal protection under the laws and a fundamental right to possess property and have liberty.

b) Whether the rules promulgated by the ISDA exceeded the statutory grant of authority given by the legislature.

c) Whether the rules were made upon unlawful procedure, including without limitation, allowing an unqualified hearing officer to prevail, excluding testimony and evidence regarding the correctness of the rules in light of the legislative intent.

d) Whether the agency acted in an arbitrary and capricious manner or otherwise abused its discretion at the time the rules were promulgated, during the enforcement stage and/or at the administrative hearing.

e) Whether the attorney fees and costs award should stand given that the Petitioners tried to cooperate with the agency to the extent that their rights were not left unprotected, given that the agency dropped certain counts, given that certain allegations of the Administrative Complaint were not upheld at the hearing and for such other reasons that might be revealed upon a review of the record. Additionally, Petitioners prevailed on some issues and otherwise did act with a reasonable basis in fact or law.

f) Elk Country reserves the right to submit an amended petition at such time as the agency record is compiled and upon its review, which may restate the above-listed issues or state new issues as the case may be.

7. Additionally, Elk Country seeks a stay of enforcement of the penalties and fees awards pursuant to I.C. § 67-5274.

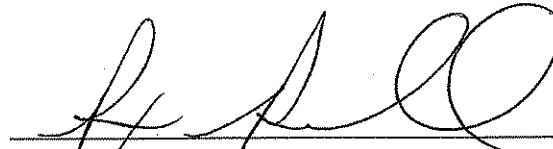
8. Elk Country respectfully requests the opportunity to present additional evidence pursuant to I.C. § 67-5276 as there were certain irregularities at the agency level or good reasons why the evidence was not previously produced.

9. Petitioners reserve the right to identify other issues as the basis for this review upon further review of the public record on file herein and of the transcripts as they

become available. Appellants further reserve the right to submit a Memorandum of Points and Authorities after review of the factual record to supplement this appeal.

WHEREFORE, Petitioners pray for the judicial review of this matter and the determination that the ISDA exceeded its constitutional and statutory authority, reached a decision on unlawful procedure, or otherwise acted in an arbitrary and capricious manner. Petitioners further ask that the requested sanctions be stayed and that no action be taken to enforce those matters pending the outcome of the review process.

DATED this 9<sup>th</sup> day of June, 2005.

  
Rex Rammell

**AFFIDAVIT OF SERVICE**

I HEREBY CERTIFY that on this 10th day of June, 2005, a true and correct copy of the foregoing PETITION FOR JUDICIAL REVIEW was served on the following as indicated below:



Rex Rammell

**PERSON SERVED**

Brian J. Oakey  
Deputy Attorney General  
Idaho State Department of Agriculture  
P.O. Box 790  
Boise, Idaho 83701-0790

**SERVICE**

Hand Delivery ( )

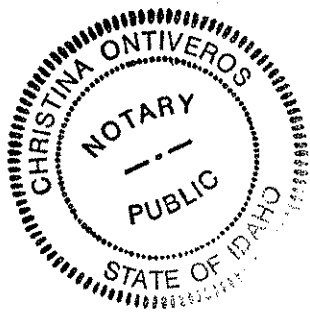
Facsimile Transmission ( )

Mailing – United States Mail  
Postage Prepaid ( X )

STATE OF IDAHO )

)

COUNTY OF Madison)

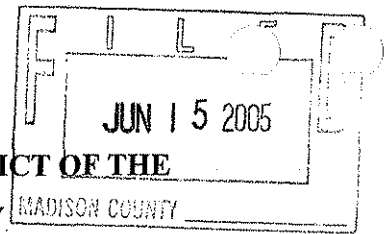


SUBSCRIBED and sworn to before me

this 10 day of June, 2005, at Rexburg, Idaho.



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR MADISON COUNTY



REX RAMMELL and LYNDA  
RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS,

Petitioner,

v.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

Case No. CV-05-438

ORDER GOVERNING  
PROCEDURE ON REVIEW

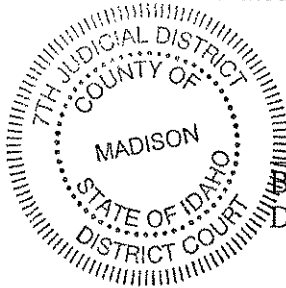
The Court has before it a petition for judicial review of a decision by the above-named governmental entity. Accordingly, it is hereby ordered that:

1. This review shall be determined on the record;
2. The above-named governmental entity shall prepare the record and lodge it with the District Court. Upon such lodging, the Clerk of the Court shall mail to counsel for the parties notice of that the record has been lodged. The fee for preparing the agency record shall be paid according to statute;
3. A transcript of the proceedings before the agency shall be prepared at the petitioner's expense;
4. Briefing shall occur according to the following schedule:
  - a. Petitioner's brief shall be filed with this Court within 35 days of the date on which notice that the transcript and record have been filed with this Court is served;
  - b. Respondents' brief shall be filed within 28 days after service of Petitioner's brief;
  - c. Petitioner's reply brief, if any, shall be filed within 21 days after service of Respondents' brief.

5. One original brief shall be filed with the District Court for Madison County, Idaho, 134 E. Main, Rexburg, Idaho 83440.
6. When all the foregoing conditions have been complied with, Petitioner shall schedule a hearing for oral argument in Rexburg on the next convenient law and motion day following the expiration of the time limit for Petitioner's reply brief. Notice of the hearing date shall be served upon this Court and counsel for Respondents. In the event that no hearing is scheduled, this Court will assume that the matter has been submitted for resolution without oral argument.

So ordered.

Dated this 15 day of June, 2005.



*Brent J. Moss*  
Brent J. Moss  
District Judge

# **CERTIFICATE OF SERVICE**

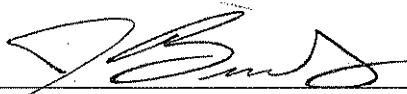
I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER  
GOVERNING PROCEDURE ON APPEAL was this 15 day of June, 2005, served  
upon the following individuals via U.S. Mail, postage prepaid:

Dr. Rex Rammell  
1365 West 5500 South  
Rexburg, ID 83440

Brian J. Oakey  
Deputy Attorney General  
Idaho Department of Agriculture  
P.O. Box 790  
Boise, ID 83701

Clerk of the Court

By:

  
\_\_\_\_\_  
Law Clerk

FILED  
JUL 29 2005  
FBI - NEW YORK

**BRIAN J. OAKLEY (ISB # 6838)**  
**Deputy Attorney General**  
**Natural Resources Division**  
**Idaho State Department of Agriculture**  
**2270 Old Penitentiary Road**  
**Boise, ID 83712**  
**Telephone: (208) 332-8509**  
**Facsimile: (208) 334-4623**

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

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**Case No. CV-05-438**

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# CERTIFICATE OF ADMINISTRATIVE RECORD

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CERTIFICATE OF ADMINISTRATIVE RECORD  
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84(f)(3)(K), attached to this Certificate of Administrative Record is a Table of Contents identifying each pleading, order and exhibit considered in the administrative hearing with each document's corresponding tab number.

DATED this 27 day of July 2005.

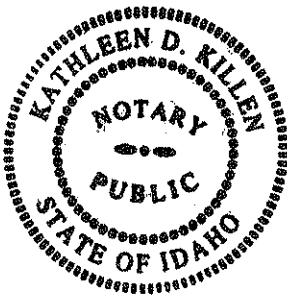
IDAHO STATE DEPARTMENT OF AGRICULTURE

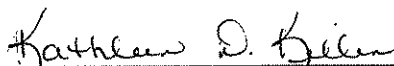
LAWRENCE G. WASDEN  
Attorney General

CLIVE J. STRONG, Deputy Attorney General  
Chief, Division of Natural Resources

  
BRIAN J. OAKEY, Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of July, 2005.



  
Notary Public for Idaho  
Residing at: Boise, Idaho  
Commission Expires: April 21, 2011

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of July, 2005, a true and correct copy of the foregoing CERTIFICATE OF ADMINISTRATIVE RECORD was served on the following as indicated below:

Dr. Rex Rammell  
1365 West 5500 South  
Rexburg, Idaho 83440

- ☐ United States Mail, Postage Prepaid
- ☒ United States Certified Mail, Return  
Receipt, Postage Prepaid, Article Number  
7000 1670 0013 7128 0243
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier

Kathy Killen  
Kathy Killen

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2.	6/29/04	Madison County Sheriff's Office	Sheriff's Return of Service
3.	7/16/04	Rex Rammell	Answer
4.	8/4/04	Jean Uranga, Hearing Officer	Notice of Telephonic Prehearing Conference
5.	8/13/04	Jean Uranga, Hearing Officer	Notice of Hearing
6.	8/16/04	Rex Rammell	Amended Answer to Complaint
7.	10/27/04	Rex Rammell	Notice of the Taking of Depositions (Dr. Clarence Siroky)
8.	10/27/04	Rex Rammell	Notice of the Taking of Depositions (Dr. Dan Crowell) and Request for Production of Documents
9.	10/27/04	Rex Rammell	Certificate of Service of Notices of Deposition for Dr. Clarence Siroky and Dr. Dan Crowell
10.	10/27/04	Rex Rammell	Respondent, Rex Rammell's First Set of Interrogatories to Complainant
11.	10/27/04	Rex Rammell	Respondent, Rex Rammell's First Requests for Admissions to Complainant
12.	10/27/04	Rex Rammell	Respondent, Rex Rammell's First Requests for Production of Documents to Complainant
13.	10/27/04	Rex Rammell	Certificate of Service of Respondents' First Set of Interrogatories, Respondents' First Requests for Admissions, and Respondents' First Requests for Production of Documents
14.	10/28/04	Brian Oakey	Stipulation
15.	11/1/04	Brian Oakey	Idaho Department of Agriculture's First Set of Interrogatories and Requests for Production of Documents to Respondent, Rex Rammell
16.	11/1/04	Brian Oakey	Idaho Department of Agriculture's Request for Admissions to Respondent, Rex Rammell
17.	11/5/04	Jean Uranga	Amended Notice of Hearing
18.	11/8/04	Rex Rammell	Respondent, Rex Rammell's Second Set of Interrogatories to Complainant

19.	11/8/04	Rex Rammell	Respondent, Rex Rammell's Second Requests for Production of Documents to Complainant
20.	11/8/04	Rex Rammell	Motion to Amend Answers to the Complaint
21.	11/8/04	Rex Rammell	Verification
22.	11/8/04	Rex Rammell	Certificate of Service
23.	11/8/04	Rex Rammell	Certificate of Service
24.	11/12/04	Brian Oakey	Idaho State Department of Agriculture's Response to Respondents' First Set of Interrogatories to Complainant Note: Due to volume, the attachments are not included
25.	11/12/04	Brian Oakey	Idaho State Department of Agriculture's Response to Respondents' First Requests for Production of documents to Complainant Note: Due to volume, the attachments are not included
26.	11/12/04	Brian Oakey	Idaho State Department of Agriculture's Response to Respondents' First Requests for Admission to Complainant Note: Due to volume, the attachments are not included
27.	11/15/04	Brian Oakey	Notice of Service of Discovery
28.	11/15/04	Brian Oakey	Notice of Service of Discovery
29.	11/18/04	Rex Rammell	Respondent, Rex Rammell's Responses to Complainant's First Set of Interrogatories, Admissions, and Request for Production of Documents Certificate of Service
30.	11/18/04	Rex Rammell	Motion to Subpoena Witnesses Verification Certificate of Service
31.	11/22/04	Rex Rammell	Notice of Service of Discovery
32.	11/22/04	Rex Rammell	Notice of Service of Discovery
33.	11/22/04	Rex Rammell	Motion to Compel Discovery
34.	11/23/04	Brian Oakey	Motion in Limine
35.	11/23/04	Brian Oakey	Memorandum in Support of Motion in Limine
36.	11/23/04	Brian Oakey	Affidavit of Dr. Dan Crowell in Support of Idaho State Department of Agriculture's Motion in Limine

37.	11/23/04	Brian Oakey	Idaho State Department of Agriculture's Response to Respondent, Rex Rammell's Second Request for Production of Documents to Complaint
38.	11/23/04	Brian Oakey	Idaho State Department of Agriculture's Response to Respondent, Rex Rammell's Second Set of Interrogatories to Complainant
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40.	11/29/04	Brian Oakey	Notice of Hearing on Motion in Limine
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42.	12/1/04	Brian Oakey	Affidavit of Brian Oakey
43.	12/1/04	Brian Oakey	Idaho State Department of Agriculture's Witness List and Copies of Exhibits
44.	12/2//04	Jean Uranga	Subpoena of Dr. Clarence Siroky, Dr. Dan Crowell, John Chatburn, Kelly Mortensen, Mark Hyndman, Bruce Donnell
45.	12/6/04	Brian Oakey	Memorandum in Opposition to Respondent's Motion to Compel Discovery
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54.	3/17/05	Brian Oakey	Notice of Hearing
55.	3/23/05	Mike Everett	Scheduling Notice
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57.	4/6/05	Brian Oakey	Memorandum in Opposition to Respondents' Petition for the Idaho State Department of Agriculture to Review the Preliminary Order

58.	4/14/05	Rex Rammell	Brief in Support of the Idaho State Department of Agriculture's Review of the Preliminary Order
59.	5/26/05	Brian Oakey	Notice of Hearing
60.	5/26/05	Brian Oakey	Memorandum of Costs
61.	5/26/05	Brian Oakey	Affidavit of Brian J. Oakey in Support of Memorandum of Costs
62.	6/13/05	Rex Rammell	Objection to Memorandum of Costs

#### ORDERS ISSUED

<u>Tab</u>	<u>Date Filed</u>	<u>Document Author</u>	<u>Document Description</u>
63.	11/18/04	Jean Uranga	Order Granting Respondents' Motion to Amend Answer
64.	12/9/04	Jean Uranga	Order on Respondents' Motion to Compel
65.	12/13/04	Jean Uranga	Order Denying Motion for Disqualification
66.	3/3/05	Jean Uranga	Findings of Fact, Conclusions of Law and Preliminary Order
67.	3/3/05	Jean Uranga	Schedule for Review
68.	5/12/05	ISDA Deputy Director	Final Order of the Deputy Director
69.	7/7/05	Jean Uranga	Supplemental Recommended Order on Costs and Attorney's Fees
70.	7/26/05	ISDA Deputy Director	Notice of Scheduling for Review of Supplemental Recommended Order on Costs and Attorney's Fees

#### EXHIBITS PRESENTED AT HEARING, DECEMBER 15, 16, AND 30, 2004

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	<u>ISDA Exhibits</u>	
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73.	002	Affidavit of Brian Oakey 12/01/04
74.	003	Stipulation 10/28/04
75.	004	E-mail from Rammell to Siroky 12/19/03
76.	005	Letter from Rammell to Crowell 12/31/03
77.	006	E-mail from Mortensen to Crowell, Garidel & Hyndman 12/19/03
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80.	009	Animal Industries Investigation Report/Case Summary 06/07/04

81.	010	Animal Industries Investigation Form 01/22/04 Crowell
82.	011	Animal Industries Investigation Form 01/26/04 Crowell
83.	012	Animal Industries Investigation Form 01/27/04 Crowell
84.	013	Animal Industries Investigation Form 01/28/04 Crowell
85.	014	Animal Industries Investigation Form 01/29/04 Crowell
86.	015	Animal Industries Investigation Form 01/30/04 Crowell
87.	016	Photo of North Side of Bullpen
88.	017	Photo of East Perimeter of Fence
89.	018	Photo of South Exterior of Fence
90.	019	Photo of Gate on South Exterior Fence
91.	020	Photo of Elk Tracks
92.	021	Photo of Southwest Corner of Bullpen
93.	022	Photo of Elk Outside of Facility
94.	023	Photo of Same Elk as in Exhibit 22
95.	025	Animal Industries Investigation Form 01/22/04 Mortensen
96.	026	Animal Industries Investigation Form 01/26/04 Mortensen
97.	027	Animal Industries Investigation Form 01/27/04 Mortensen
98.	028	Animal Industries Investigation Form 01/28/04 Mortensen
99.	029	Animal Industries Investigation Form 01/29/04 Mortensen
100.	031	CWD Sample Submission Form/Death Certificate
101.	032	Removal Sheet
102.	033	Animal Industries Investigation Form 01/26/04 Hyndman
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110.	041	Letter from Department to Rammell and Ward 06/27/03
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116.	D	Affidavit of Dan Crowell in Support of Amended Administrative Warrant
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119.	J	Cervidae Farms Facility Inspection Report Dated December 30, 2003
120.	L	Annual Domestic Cervidae Ranch Assessment – Certificate No. 40
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122.	S	Small Antler
123.	T	Large Antler

124.	U	Unedited Videotape
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126.	W	E-mail from Mortensen to Crowell and Hyndman
127.	X	Facility Inspection Report 09/09/04
128.	Y	2002 Inventory Spreadsheet
129.	Z	ISDA Response to Respondent's First Set of Interrogatories to Complainant
130.	AA	ISDA Response to Respondent's First Request for Admissions to Complainant
131.	BB	ISDA Response to Respondent's First Request for Production of Documents to Complainant
132.	CC	ISDA Supplemental Responses to Respondent's Interrogatories 7, 10, 15
133.	DD	ISDA Response to Respondent's Second Set of Interrogatories to Complainant
134.	EE	ISDA response to Respondent's Second Requests for Production of Documents to Complainant
135.	FF	2003 Inventory
136.	GG	Annual Domestic Cervidae Assessed Fee Document



SEP - 6 2005

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON**

REX RAMMELL dba ELK COUNTRY  
TROPHY BULLS

Petitioner,

vs.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE

Respondent.

Case No. CV 2005-438

**ORDER  
&  
NOTICE OF HEARING**

In the above captioned matter, the Petitioner has filed a petition for judicial review and this Court has issued an Order Governing Procedure on Review. In accord with the Order Governing Procedure on Review, the Respondent has submitted what it proposes to be the administrative record. The Clerk of Court has yet to file a notice of lodging and the Court is not in possession of any transcripts of the proceedings that occurred in the administrative action.

The Court has conducted a cursory examination of the proposed administrative record and of the petition for judicial review. Based upon that examination, the Court is raising, *sue sponte*, the issue of subject matter jurisdiction before any of the parties bear any further expense in pursuing or defending this review. The petition in this matter seeks review of the Final Order of the Deputy Director. The petition was filed on June 10, 2005. The final order was entered and served on May 12, 2005. It appears that Petitioner filed his petition 29 days after the final order. According to statute, a petition for review needs to be filed within 28 days of the issuance of a final order. I.C. § 67-

5273. This time limit is jurisdictional. However, the Respondent did issue supplemental orders which may affect the deadline for filing the petition.

Therefore, this Court gives notice that it will hear the oral arguments of the parties on the above-discussed issue on the **October 3, 2005, 10:00 a.m.**, at the Madison County Courthouse. Should the parties desire, they may appear telephonically after making the necessary arrangements with the Clerk of Court's office.

### **BRIEFING SCHEDULE**

Should the parties wish to submit briefs to the Court on this issue, they are invited to do so in accord with the following briefing schedule:

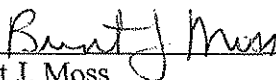
Petitioner and Respondent may file their respective briefs with this Court and have served their brief upon the opposing party **on or before September 21, 2005.**

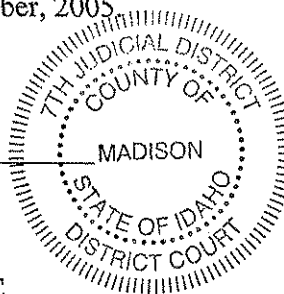
Petitioner and Respondent may respond to each other's brief via a reply brief which must be filed with the Court and served upon the opposing party **on or before September 29, 2005.**

The briefs shall only address the issue of subject matter jurisdiction as discussed above and shall not address any of the substantive issues of the appeal.

SO ORDERED.

Dated this 6 day of September, 2005.

  
Brent J. Moss  
District Judge



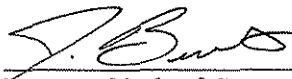
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was this 6 day of September, 2005 served upon the following individual via U.S. Mail, postage prepaid:

Dr. Rex Rammell  
1365 West 5500 South  
Rexburg, ID 83440

Brian J. Oakley  
Deputy Attorney General  
Idaho State Department of Ag.  
P.O. Box 790  
Boise, ID 83701-0790

By:

  
~~Deputy Clerk of Court~~  
*Law Clerk*

SEP 12 2005

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REX RAMMELL and LYND  
RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS,

Petitioner,

v.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

Case No. CV-05-438

NOTICE OF LODGING  
ADMINISTRATIVE RECORD

The Court hereby gives notice that a certified copy of the administrative record and transcript in the matter of *Idaho State Department of Agriculture v. Rex Rammell & Lynda Rammell, doing business as Elk Country Trophy Bulls*, Case No. M03-02-04-1130DC, has been lodged with the Clerk of the Court pursuant to IRCP 84(k).

Briefing shall occur pursuant to the Court's Order Governing Procedure on Review, dated June 15, 2005.

DATED this 12 day of September 2005.

Marilyn R. Rasmussen  
Clerk Of The District Court

By:

  
Deputy Clerk

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF LODGING ADMINISTRATIVE RECORD was this 13 day of September, 2005, served upon the following individuals via U.S. Mail, postage prepaid:

Dr. Rex Rammell  
1365 West 5500 South  
Rexburg, Idaho 83440

Brian J. Oakey  
Deputy Attorney General  
Idaho Department of Agriculture  
P.O. Box 790  
Boise, ID 83701

DATED this 13 day of September 2005.

Marilyn R. Rasmussen  
Clerk Of The District Court

By: \_\_\_\_\_

Deputy Clerk

FILED  
SEP 21 2005  
FBI - NEW YORK

**BRIAN J. OAKLEY (ISB # 6838)**  
**Deputy Attorney General**  
**Natural Resources Division**  
**Idaho State Department of Agriculture**  
**2270 Old Penitentiary Road**  
**Boise, ID 83712**  
**Telephone: (208) 332-8509**  
**Facsimile: (208) 334-4623**

REX RAMMELL and LYNDAL  
 RAMMELL, d/b/a ELK COUNTRY  
 TROPHY BULLS,  
 Petitioners,  
 v.  
 IDAHO STATE DEPARTMENT OF  
 AGRICULTURE,  
 Respondent.

**BRIEF IN RESPONSE TO THE  
COURT'S ORDER REGARDING  
SUBJECT MATTER  
JURISDICTION**

G SUBJECT MATTER JURISDICTION - Page 1

## **PROCEDURAL BACKGROUND**

In July of 2004, the ISDA filed an Administrative Complaint alleging Rex Rammell and Lynda Rammell, dba Elk Country Trophy Bulls (hereinafter "Petitioners") violated certain provisions of the Domestic Cervidae Farms Act and the accompanying Rules Governing Domestic Cervidae. The ISDA conducted an administrative hearing over the course of three days in December 2004. Ms. Jean R. Uranga, Esq., presided over the administrative hearing, serving as the Hearing Officer. The Hearing Officer subsequently issued the Findings of Fact, Conclusions of Law and Preliminary Order ("Preliminary Order"), which was filed by the ISDA on March 3, 2005. See Administrative Record at tab 66. The Preliminary Order was accompanied by a Schedule for Review, which was served on the parties and filed by the ISDA, also on March 3, 2005. See id. at tab 67. Petitioners timely filed a petition seeking review by the Director of the ISDA of the Preliminary Order issued by the Hearing Officer. See id. at tab 53. The parties came on for hearing before Deputy Director Michael Everett on April 29, 2005, for the purpose of addressing those issues raised by the Petitioners in their petition seeking review of the Preliminary Order. The ISDA then issued its Final Order of the Deputy Director ("Final Order") on May 12, 2005. See id. at tab 68. The Final Order advised the parties of their right to file a motion for reconsideration within fourteen (14) days of the service date of the Final Order. See id. at tab 68, page 14. Neither party elected to file a motion for reconsideration. Twenty-nine (29) days following the issuance and service of the Final Order, Petitioners filed with this Court a Petition for Judicial review seeking review of the contested case proceeding.

The Final Order affirmed the Preliminary Order in all regards, including the award of costs and attorney fees. See id. at tab 68. The ISDA issued a Notice of Hearing on May 26, 2005, and the parties came on for hearing before the Hearing Officer on June 21, 2005, for the

limited purpose of determining the appropriate amount of costs and attorney's fees to be awarded to the ISDA. See id. at tab 59. On July 7, 2005, the Hearing Officer issued a Supplemental Recommended Order on Costs and Attorney's Fees ("Supplemental Recommended Order") recommending that the ISDA issue a Supplemental Final Order assessing costs and attorney's fees against Petitioners in the amount requested by the ISDA. See id. at tab 69, page 4. On August 12, 2005, Petitioners filed a Memorandum in Opposition to Supplemental Costs with the ISDA. See Exhibit A. The ISDA issued a Supplemental Final Order of the Deputy Director ("Supplemental Final Order") on Costs and Attorney Fees on August 26, 2005, adopting those costs and attorney fees recommended by the Hearing Officer in the Supplemental Recommended Order. See Exhibit B.

### **ARGUMENT**

The sole issue presently before the Court is that of subject matter jurisdiction with respect to the timeliness of Petitioners filing their Petition for Judicial Review. The right to judicial review of an administrative matter is not inherent, rather it is statutory. See Daw v. School District 91 Board of Trustees, 136 Idaho 806, 807, 41 P.3d 234, 235 (2001) (citing Striebeck v. Employment Sec. Agency, 83 Idaho 531, 366 P.2d 589 (1961); Miller v. Gooding Highway Dist., 54 Idaho 154, 30 P.2d 1074 (1934)). A statutory right to appeal arises only after strict compliance with the provisions of the statute. See 2 Am. Jur. 2d Administrative Law § 405 (2005) (citations omitted). Noncompliance with the statute governing judicial review deprives the court of jurisdiction to hear the case. See e.g., Farmers Equipment Co., Inc. v. Clinger et al., 70 Idaho 501, 504222 P.2d 1077, 1078-79 (1950) ("Where a[] [bond] on appeal is not filed within five days after notice of appeal, and the undertaking was not waived, and there was no



deposit of money, the Supreme Court will dismiss the appeal for want of jurisdiction, *the statutory requirements being mandatory.*" (emphasis added)).

The right of judicial review of a contested case proceeding before the ISDA is outlined in Idaho Code § 67-5270(3), as follows:

A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter *if the person complies with the requirements of sections 67-5271 through 67-5279, Idaho Code.*

Emphasis Added.

Section 67-5273(2) provides the proper time frame for a party aggrieved by a final order issued by the ISDA to file a petition for judicial review.

A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under section 67-5271(2), Idaho Code, must be filed *within twenty-eight (28) days* of the issuance of the final order, the date when the preliminary order became final, or the issuance of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within, twenty-eight (28) days after the decision thereon. . . .

Idaho Code § 67-5273(2) (emphasis added).

Petitioners filed their Petition for Judicial Review with this court on June 10, 2005, twenty-nine (29) days following the service date of the Final Order. The Hearing Officer, in the Schedule for Review filed on March 3, 2005, advised the parties of the applicable statutes governing judicial review and, citing Idaho Code § 67-5273, informed the parties that a petition must be filed with the district court within twenty-eight (28) days of the Preliminary Order becoming final. See Administrative Record at tab 67, page 3. The ISDA, in its Final Order, again citing Idaho Code § 67-5273, advised Petitioners of the requirement to file a petition for review with the district court within twenty-eight (28) days of the service date of the Final Order. See Administrative Record at tab 68, page at 14. Additionally, the Final Order informed the

parties that the subsequent Supplemental Final Order to be issued by the ISDA with respect to costs and attorney fees was not interlocutory. The Deputy Director stated that “the issuance of th[e] Supplemental Final Order does not delay the time for reconsideration of or judicial review of this Final Order.” Id., page 13. Petitioners acknowledged this fact in their Petition for Judicial Review when they stated the following: “Having exhausted all administrative remedies, Elk Country is now entitled to a review of this matter by the District Court.” Petition for Judicial Review at 2.

The time for filing a petition for judicial review may only be extended by the timely filing of a motion which could affect the findings of fact and conclusions of law, in this case a motion for reconsideration. See State v. Lawson, 105 Idaho 164, 165, 667 P.2d 267, 268 (1983) (quoting I.A.R. 14). Idaho Appellate Rule 14 specifically provides that motions regarding costs and attorney fees before the Public Utilities Commission or the Industrial Commission do not extend the time for filing a petition for judicial review. See id. (citing Wheeler v. McIntyre, 100 Idaho 286, 290, 596 P.2d 798, 802 (1979)). The fact that a hearing was held and a subsequent order was issued by the ISDA with respect to costs and attorney fees after the Final Order was filed on May 12, 2005, did not toll the time that Petitioners had to file their Petition for Judicial Review. See id.

The Idaho Supreme Court, having had occasion to address the issue of untimely filing of a petition for judicial review, has settled the matter with respect to subject matter jurisdiction now before this Court. See Arthur v. Shoshone County, 133 Idaho 854, 993 P.2d 617 (2000). In Arthur, the petitioner sought judicial review of the Shoshone County Planning and Zoning Commission’s (“P&Z Commission”) denial of a conditional use permit to operate a towing business. See id. at 855, 618. The petition for review was filed in the appropriate district court

thirty (30) days following the P&Z Commission's denial of the application. See id. A motion for reconsideration was timely filed before the P&Z Commission. See id. After determining that the P&Z Commission did not have the statutory authority to take up the motion for reconsideration and that the filing of the motion for reconsideration did not toll the time for filing a petition for judicial review, the district court held that the petition for review was untimely filed and dismissed it for lack of jurisdiction. See id. at 856, 619. The Idaho Supreme Court upheld the lower courts decision, concluding that "Arthur's petition for judicial review of the Board's order denying his application for a conditional use permit was untimely." Id. at 862, 625.

The fact that Petitioners in the administrative case below elected not to file a motion for reconsideration before the ISDA simplifies the analysis. Issues related solely to costs and attorney fees do not affect the time for filing a petition for judicial review. See Wheeler v. McIntyre, 100 Idaho 286, 290, 596 P.2d 798, 802 (1979). Therefore, the Final Order became ripe for appeal on May 12, 2005, and expired on June 9, 2005. Petitioners' failure to timely file their Petition for Judicial Review deprived this Court of jurisdiction and requires "automatic dismissal . . . ." Id.

### CONCLUSION

The issue of subject matter jurisdiction with respect to the timeliness of filing a petition for judicial review is not a matter of discretion for the courts, rather it is outlined statutorily in clear and unambiguous terms. Petitioners right to judicial review only arises after compliance with the requirements of Idaho Code §§ 67-5271 through 67-5279. See Idaho Code § 67-5270(3). Petitioners have failed to comply with the twenty-eight (28) day time frame for filing


their Petition for Judicial Review. Accordingly, this Court lacks the requisite jurisdiction to review the Final Order and has no other choice but to dismiss the Petition for Judicial Review.

DATED this 19<sup>th</sup> day of September 2005.

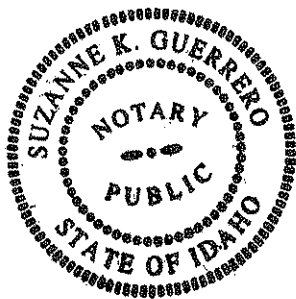
IDAHO STATE DEPARTMENT OF AGRICULTURE

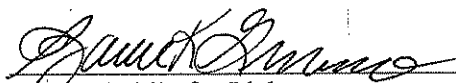
LAWRENCE G. WASDEN  
Attorney General

CLIVE J. STRONG, Deputy Attorney General  
Chief, Division of Natural Resources

  
BRIAN J. OAKEY, Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of September, 2005.



  
Notary Public for Idaho  
Residing at: Boise, Idaho  
Commission Expires: 12-30-10

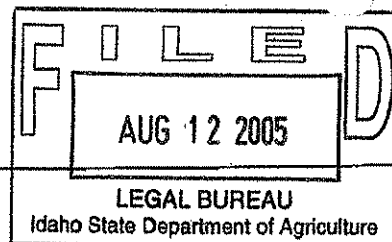
### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19<sup>th</sup> day of September, 2005, a true and correct copy of the foregoing BRIEF IN RESPONSE TO THE COURT'S ORDER REGARDING SUBJECT MATTER JURISDICTION was served on the following as indicated below:

Dr. Rex Rammell  
490 Pioneer Road, Apt 6105  
Rexburg, Idaho 83440

- ☒ United States Mail, Postage Prepaid
- ☐ United States Certified Mail, Return Receipt, Postage Prepaid
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier

  
Suzanne Guerrero



## BEFORE THE IDAHO STATE DEPARTMENT OF AGRICULTURE

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Complainant

v.

REX RAMMELL & LYNDA RAMMELL  
DBA ELK COUNTRY TROPHY BULLS

Respondents.

CASE NO. M03-02-04-1130DC

MEMORANDUM IN OPPOSITION  
TO SUPPLEMENTAL COSTS

NOW COMES the Respondent, Rex Rammell, proceeding in pro per, and for his appeal respectfully represents unto The Idaho State Department of Agriculture as follows:

Any further award of fees is inappropriate. No attorney fees were appropriate from the beginning. Respondents believe they did act with a reasonable basis in fact and law as has argued in the record. Furthermore, respondent's arguments on all counts have not been heard and to state that they acted without a reasonable basis in fact and or law is mere opinion. A difference of opinion is not grounds for an unreasonable award of fees. Therefore, respondent renews all their previous objections found throughout the administrative process with emphasis on the fact that there has been no basis on which to rule that supplemental fees are appropriate.

Dated this 12 day of August, 2005

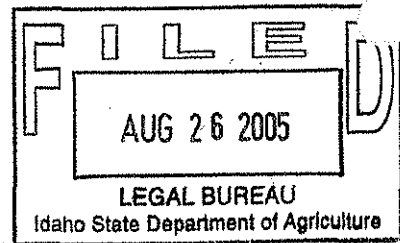
Rex Rammell



RECEIVED

AUG 12 2005

LEGAL BUREAU  
IDAHO DEPARTMENT OF AGRICULTURE



BEFORE THE IDAHO DEPARTMENT OF AGRICULTURE

IDAHO DEPARTMENT OF  
AGRICULTURE,

Complainant,

-vs-

REX RAMMELL & LYND  
RAMMELL, doing business as ELK  
COUNTRY TROPHY BULLS,

Respondents.

) Case No. M03-02-04-1130DC

) SUPPLEMENTAL FINAL ORDER  
) OF THE DEPUTY DIRECTOR ON  
) COSTS AND ATTORNEY'S FEES

This matter came before the Director's designee Deputy Director Michael Everett upon the review of the Hearing Officer's Supplemental Recommended Order on Costs and Attorney's Fees. The Hearing Officer awarded the Department its costs and fees pursuant to my Final Order of the Deputy Director, which affirmed the Hearing Officer's Findings and Conclusions that the Department was entitled to an award under Idaho Code § 12-117(1) of reasonable attorneys' fees, witness fees and expenses against the Respondents and which directed "the Department [to] issue a Supplemental Final Order for Allowable Costs and Fees Under Idaho Code § 12-117(1) after receiving all parties' submissions." The Hearing Officer's Supplemental Recommended Order on Costs and Attorney's Fees quantified the Department's award at \$29,372.96. By this Supplemental Final Order of the Deputy Director on Costs and Attorney's Fees I affirm the Hearing Officer's award of \$29,373.96 against the Respondents.

EXHIBIT

B

The Supplemental Recommended Order on Costs and Attorney's Fees quantified its award as follows:

Department's attorney	\$19,143.00
Transcript costs	\$ 4,339.30
Witness fees	\$ 1,146.78
Telephone charge	\$ 8.38
<u>Hearing officer costs</u>	<u>\$ 4,735.50</u>
Total	\$29,372.96

The attorney's fees for the Department were based upon a modest, perhaps even unreasonably low rate of \$75/hour.<sup>1</sup> They are not unreasonably high, and I accept them. The remaining costs are based upon objectively ascertainable third party billings. I accept all of them. The Respondents' liability for costs and fees is settled and will not be reviewed again in this Order. I fully accept the Hearing Officer's rationale for the quantification of costs and fees in her Supplemental Recommended Order.

**SUPPLEMENTAL FINAL ORDER ON COSTS  
AND ATTORNEY'S FEES**

**IT IS HEREBY ORDERED** that the Hearing Officer's Recommended Supplemental Final Order on Costs and Attorney's of \$29,372.96 be affirmed.

Dated this 26<sup>th</sup> day of August, 2005

  
\_\_\_\_\_  
MICHAEL EVERETT, Deputy Director

---

<sup>1</sup> For example, the District Court in Madison County has awarded the Department fees at a rate of \$95/hour. See Memorandum Decision of July 1, 2005, in *Rammell v. Idaho State Department of Agriculture*, Case No. CV-05-199.



This Supplemental Final Order on Costs and Attorney's Fees is a Final Order of the Deputy Director of the Idaho Department of Agriculture. Any party may file a motion for reconsideration of this Supplemental Final Order on Costs and Attorney's Fees within fourteen (14) days of the service date of this Final Order. The Deputy Director will dispose of the motion for reconsideration within twenty-one (21) days of its receipt, or the motion will be considered denied by operation of law. See Section 67-5246(4), Idaho Code.

Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this Supplemental Final Order on Costs and Attorney's Fees may petition for judicial review of this Final Order by filing a petition for judicial review in the district court of a county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or
- iv. The real property or personal property that was the subject of the agency action is located.

A petition for judicial review must be filed within twenty-eight (28) days (a) of the service date of this Supplemental Final Order on Costs and Attorney's Fees, (b) of an Order denying a motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a motion for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of a petition for judicial review to the district court does not itself stay the effectiveness or enforcement of this Supplemental Final Order on Costs and Attorney's Fees.

### Certificate of Service

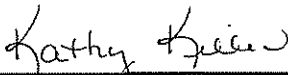
I HEREBY CERTIFY that on this 26<sup>th</sup> day of August, 2005, I caused to be served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

Dr. Rex Rammell  
1365 West 5500 South  
Rexburg, Idaho 83440

U.S. Mail, Postage Prepaid  
Certified Mail, Return Receipt,  
#7003 0500 0003 1880 0454

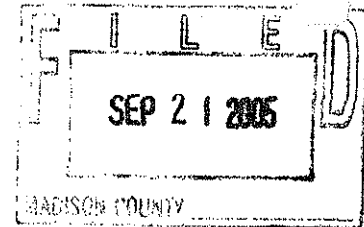
Brian J. Oakey  
Deputy Attorney General  
Idaho Department of Agriculture  
2270 Old Penitentiary Road  
Boise, Idaho 83712

Statehouse Mail

  
\_\_\_\_\_  
KATHY KILLEN  
Idaho Department of Agriculture

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Bron M. Rammell, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
216 W. Whitman/P.O. Box 370  
Pocatello, Idaho 83204-0370  
Telephone: (208) 233-0132  
Facsimile: (208) 234-2961  
Idaho State Bar No. 4389



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REX RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS;

Petitioner,

vs.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE

Respondent.

Case No. CV-2005-438

**BRIEF RE: TIMELINESS OF  
PETITION FOR JUDICIAL REVIEW**

Pursuant to the Court's Order dated September 6, 2005, Petitioner Rex Rammell, through counsel, submits the following briefing in support of the fact that his Petition for Judicial Review was filed in a timely manner.

**I. BACKGROUND**

The Department of Agriculture issued a document titled "Final Order of the Deputy Director" on May 12, 2005. The certificate of service indicates that the document was mailed the same day to petitioner, Rex Rammell. One of the major issues that was addressed in the Order was an award of attorney's fees. This issue was and has been contested in the Petition for Judicial Review.

After the Order dated May 12, 2005, the Administrative Hearing Officer submitted a Supplemental Recommended Order on attorney's fees. On August 26, 2005, the Idaho Department of Agriculture adopted the hearing officer's Supplemental Recommended Order and issued a document titled Supplemental Final Order of the Deputy Director. Rex Rammell timely objected to, and sought additional review of the attorney's fees issue in compliance with administrative procedure.

The two issues identified below demonstrate that the Petition for Judicial Review was filed in a timely manner.

## **II. THE SUPPLEMENTAL FINAL ORDER EXTENDED ANY TIME PERIODS FOR FILING A PETITION FOR JUDICIAL REVIEW**

Unlike an Appeal from a District Court decision, filing a Petition for Judicial Review is governed by I.R.C.P. 84(b) and I.C. §67-5273. I.R.C.P. 84(b) states that a Petition for Judicial Review must be filed within 28 days "after the agency action is **ripe** for Judicial Review. . ." *Id.* (Emphasis Added). The time period is further extended upon a timely motion that affects the judgment. *Id.* The Supplemental Order affected the judgment.

The whole concept of "exhaustion" in administrative review is to ensure that an Administrative Agency has completed every part of its case, and has made a final and concluding decision. Unlike a District Court, an Administrative Agency is not a neutral party. The doctrines of "exhaustion" and "ripeness" have an important and critical place in Petitions for Review. Allowing an Administrative Agency to issue subsequent Orders, without extending the time limits to seek review of any such Orders defeats the very purpose of the doctrines of exhaustion and ripeness. The result would cause litigants to deal with administrative issues in a "piece-meal" fashion.

Even in an Appellate context, when an amendment to a judgment is made, the seasonableness of an appeal is generally determined based on the date of the amendment rather than the date of the original order. *Dahlstrom v. Portland Mining Company*, 12 Idaho 87 (S. Ct. 1906).

In *Idaho Department of Health & Welfare v. Southfork Lumber Company*, 123 Idaho 146 (S. Ct. 1993) the Idaho Supreme Court dealt with the timeliness of an appeal (as opposed to a Petition for Review) as affected by a request for attorney's fees. The Court adopted the language in I.A.R. Rule 14, explaining that an Appeal is tolled by the filing of a timely motion "which, if granted, could effect any findings of facts, conclusions of law, and judgment in the action. . . ." Since a motion for fees was filed in the case in a timely manner, and the issue was addressed after the previous order, the Court of Appeals dismissal of the appeal was reversed. The issue of attorney's fees in

this case has been a significant issue. The Department's titling the subsequent order, "Supplemental Final Order" recognizes this fact.

In the case at hand, the Department of Agriculture sent Rex a "Supplemental Final Order" that materially affected their previous order. *Dahlstrom* explains that the statutorily prescribed period of limitations of judicial review should take effect from the filing of any Supplemental Final Order. Under that standard the Petition for Judicial Review was timely.

### III. THE PETITION FOR JUDICIAL REVIEW WAS TIMELY FILED UNDER THE IDAHO RULES OF CIVIL PROCEDURE.

As previously discussed, an Administrative Agency is not a District Court. The rules do not treat Petitions for Judicial Review the same as an appeal. For example, Appellate Rule 14, requires filing an appeal within 42 days "from the date evidenced by the filing stamp of the Clerk of the Court" Idaho Rules of Civil Procedure 84(b) on the other hand, prescribes a 28-day time period for filing a petition, from the time Agency action is "ripe" for judicial review. I.C. §67-5273 talks about filing a petition within 28 days of "agency action, except as provided by other provisions of the law."

In this case, Rex was still responding to the Agency's Motions, and exhausting his administrative remedies in August 2005. The Agency was clearly still engaged in "action" and all issues were not "ripe" until the Final Supplemental Order was served.

In this particular case, it is also critical that the Court view the Final Order from the eyes of a reasonable person receiving the Order.

The Order specifically instructed Rex that the Petition for Judicial Review was required to be filed "within 28 days '(a) of the service date of this Order. . .'" A person reading this information would logically refer to the Idaho Rules of Civil Procedure for guidance. In particular, I.R.C.P. 6(e)(1) explains that a person who has been "served" a document by mail, enjoys a three-day grace period in addition to any prescribed limitations. *I.R.C.P. Rule 6(e)(1)*. Rex's Petition for Judicial Review was submitted on June 10, 2005, which was 29 days after the Department of Agriculture signed its first Order. It was two days before the time lapsed applying I.R.C.P. 6(e)(1).

Unlike an appeal from a decision of a District Court, in which the rule specifically directs a person to file an appeal within 42 days of the filing stamp, a Petition for Judicial

Review affords 28 days from the vague date of "ripeness".<sup>1</sup> Rex obviously did not receive the original "final order" on May 12, 2005. Fairness requires that he be given an additional three days to file his Petition per reasonable reliance on I.R.C.P. Rule 6(e)(1). It is again hoped that this Court will remember that Administrative Agencies are not the same as a Court. They are adverse parties with the capability (which the laws traditionally indicates should be carefully scrutinized) of acting in a legislative, executive and judicial capacity. Without a specific rule telling a petitioner he must file his petition within 28 days of the date of an order as opposed to service plus three days as set forth in the Idaho Rules, a Petitioner should not be held to a rigid rule that is purely a "stumbling block" and only benefits an adverse party.

#### IV. CONCLUSION

Fundamental and traditional fairness and Due Process suggest that Rex was entitled to rely on I.R.C.P. 6(e)(1) and file his petition within 28 days plus three days from mailing. This is especially true when the Order referred to "service" and he did not receive the Order until a few days after it was signed.

Rex timely objected to the Agency's attorney's fees request and a Supplemental Order was issued by the Department of Agriculture. Without the Supplemental Final Order, a primary issue of the case, the award, reasonableness, and amount of attorney's fees, would not be able to be addressed, and the doctrine of exhaustion would be rendered moot. A decision finding that Rex was required to address or appeal the attorney's fee issue multiple times creates an unreasonable burden on any litigant, and any reasonable litigant would conclude that they had three days beyond the date of mailing of the first Order of the Deputy director in any event.<sup>2</sup>

DATED this 21<sup>st</sup> day of September, 2005.

DIAL, MAY & RAMMELL, CHTD.

  
Bron M. Rammell

<sup>1</sup> Compare I.A.R. 14 to I.R.C.P. 84(b).

<sup>2</sup> See Final Order of the Deputy Director, Page 14.

## CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on the following named persons at the address shown and in the manner indicated.

Brian Oakey  
2270 Old Penitentiary Rd  
Boise, ID 83712

☒ U.S. Mail  
☐ Hand Delivery  
☐ Facsimile

DATED this 21<sup>st</sup> day of September, 2005.



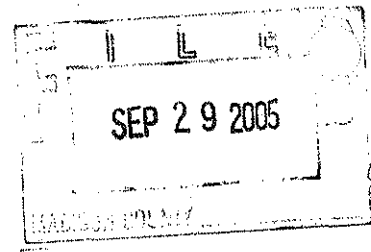
DIAL, MARY RAMELL, CHARTERED

LAWRENCE G. WASDEN  
Attorney General

CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division

BRIAN J. OAKLEY (ISB # 6838)  
Deputy Attorney General  
Natural Resources Division  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
Boise, ID 83712  
Telephone: (208) 332-8509  
Facsimile: (208) 334-4623

Attorneys for Respondent



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REX RAMMELL and LYNDA  
RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS,

Petitioners,

v.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

Case No. CV-05-438

REPLY BRIEF IN SUPPORT OF  
DISMISSAL OF PETITION FOR  
JUDICIAL REVIEW

INTRODUCTION

Petitioners assert that the issuance of the Supplemental Final Order of the Deputy Director on Costs and Attorney's Fees ("Supplemental Order") by the ISDA in the administrative proceeding below has tolled the time in which Petitioners are required to file their Petition for Judicial Review. In support of this assertion, Petitioners claim that the award of



attorney fees is a major issue addressed in the Final Order of the Deputy Director ("Final Order") and has been contested in the Petition for Judicial Review. Petitioners argue further that the issuance of the Supplemental Order by the ISDA materially affected the previously filed Final Order thereby tolling the time limit for filing a Petition for Judicial Review as prescribed by Idaho Code § 67-5273.

Additionally, Petitioners rely on I.R.C.P. 6(e)(1), arguing that the twenty-eight (28) day time limit for filing the Petition for Judicial Review was extended by three (3) days. Petitioners state that "[f]airness requires that [Petitioners] be given an additional three days to file [the] Petition per reasonable reliance on I.R.C.P. Rule 6(e)(1)." Brief Re: Timeliness of Petition for Judicial Review at 4.

Petitioners' arguments are without merit. *First*, the time period for filing a petition for judicial review is clearly outlined in Idaho Code § 67-5273 and in the instant case only the filing of a motion for reconsideration could have extended the filing deadline for the Petition for Judicial Review. Petitioners did not file a motion seeking reconsideration of the Final Order with the ISDA below. Accordingly, the time to file a petition for judicial review has not been tolled. *Second*, the three day grace period contemplated by I.R.C.P. 6(e)(1) has no application with respect to the timeliness of Petitioners filing the Petition for Judicial Review now before the Court. The issue of subject matter jurisdiction is not a matter of fairness for the courts to decide within their discretion as Petitioners suggest. Rather, a court either has jurisdiction or it does not. In this case, the Court does not have jurisdiction over the Petitioners' case because the Petition for Judicial Review was not timely filed and the Court must dismiss Petitioners' case on those grounds.

## REPLY ARGUMENT

### **I. THE TIME LIMIT FOR PETITIONERS TO FILE THEIR PETITION FOR JUDICIAL REVIEW HAS NOT BEEN EXTENDED**

Petitioners, by asserting that the time limit for filing the Petition for Judicial Review was extended rely on the assumption that the Supplemental Order materially affected the previously filed Final Order issued by the ISDA. See Brief Re: Timeliness of Petition for Judicial Review at 3. Contrary to Petitioners' assertions, the issue regarding the award of costs and attorney fees was settled by the Final Order. See Final Order of the Deputy Director at 13. The only issue to be settled by the parties following the issuance of the Final Order was the actual amount of costs and attorney fees to be awarded. A hearing to determine the actual amount of costs and attorney fees was conducted before the Hearing Officer in light of a recent Idaho Supreme Court decision requiring such a hearing. See Findings of Fact, Conclusions of Law and Preliminary Order at 21 (citing Haw v. Idaho State Board of Medicine, 140 Idaho 152, 90 P.3d 902, 2004). Petitioners filed a motion seeking additional review of the Hearing Officer's Supplemental Recommended Order on Costs and Attorney's Fees. However, Petitioners' motion, even if granted, would have had no affect on any of the findings of facts or conclusions of law in the Final Order. The subsequent hearing held and the issuance of a Supplemental Order by the ISDA was for the limited purpose of determining the amounts to be paid by Petitioners, not to reconsider the award of costs and attorney fees to the ISDA. Additionally, motions related solely to costs and attorney fees, in this case the actual amount of costs and attorney fees to be paid, do not affect the time frame that a petitioner must file a petition for judicial review. See Wheeler v. McIntyre, 100 Idaho 286, 290, 596 P.2d 798, 802 (1979).

Petitioners cannot now reconcile their actions in this case with their contention that the Final Order was not ripe for review upon its issuance. Petitioners acknowledged upon the filing

of their Petition for Judicial Review that all administrative remedies had been exhausted. See Petition for Judicial Review at 2. Additionally, the untimely filing of their Petition for Judicial Review came after the issuance of the Final Order and before the issuance of the Supplemental Order. If Petitioners, as they now contend, did not believe the Final Order was ripe for review, logic would dictate that the Petition for Judicial Review would have come some time after the issuance of the Supplemental Order, not before it.

**II. IDAHO RULE OF CIVIL PROCEDURE 6(e)(1) DOES NOT APPLY TO THE TIME LIMITS SET BY IDAHO CODE § 67-5273**

Petitioners contend that they should not be held to a rigid rule with respect to the time limits set by Idaho Code § 67-5273. See Brief Re: Timeliness of Petition for Judicial Review at 4. In doing so, Petitioners argue that the three day grace period contemplated in I.R.C.P. 6(e)(1) should allow Petitioners an additional three days to file their Petition for Judicial Review. Petitioners reliance on I.R.C.P. 6(e)(1) to extend the time requirements for filing their Petition for Judicial Review ignores the plain language of the governing statute and is without merit.

It appears that this is an issue yet to be addressed by Idaho courts, however, cases in other jurisdictions support the conclusion that I.R.C.P. 6(e)(1) does not extend the time for filing a Petition for Judicial Review. See e.g., Carter-McMahon v. McMahon, 815 N.E.2d 170 (2004) (Indiana rule does not extend the time limit for filing a motion to correct error because the procedural rule is only activated by the service of a notice rather than the entry of a final judgment or an appealable final order). The McMahon case, although not binding precedent, is on point with the issue now before this Court. The McMahon Court, in construing the procedural rule looked to its express terms to resolve the issue before it. See id. at 175. The Indiana rule of procedure at issue in McMahon is identical to I.R.C.P. 6(e)(1). Compare Indiana

Trial Rule 6(E) with I.R.C.P. 6(e)(1). The procedural rule at issue in McMahon and now before this Court provides:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period *after the service of a notice* or other paper upon him and the notice or paper is served upon him and the notice or paper is served upon him by mail, three (3) days shall be added to the prescribed period.

I.R.C.P. 6(e)(1) (emphasis added). The McMahon Court concluded that the rule granting an additional three days was only triggered by the service of a notice and not the filing of a final judgment or an appealable final order. See McMahon, 815 N.E.2d at 175. The Court also observed that neither rule before it cited the other and stated that “we are unconvinced that Rule 6(E) is related to Rule 59(C), let alone applies to extend the thirty-day period that begins upon entry of judgment.” *Id.* The Court cited a number of federal circuit decisions that bolstered its conclusion that the time deadline at issue was unaffected by the three day grace period. See *id.* at 175-76 (citing, among others, Lorenz v. Valley Forge Ins. Co., 23 F.3d 1259, 1260 (7th Cir. 1994) (“Rule 6(e) does not add three days to Rule 54’s five-day period that starts with entry of the clerk’s order”); accord Lerro v. Quaker Oats Co., 84 F.3d 239, 241 (7th Cir. 1996) (“when judicial action is complete on filing, Rule 6(e) does not apply”); cf. Bailey v. Sharp, 782 F.2d 1366, 1372 (7th Cir. 1986) (Easterbrook, J., concurring) (“Rule 6 makes it clear that courts have no authority to enlarge the filing period”).

In the case now before the Court, as in McMahon, there has not been the service of a notice that would trigger the application of I.R.C.P. 6(e)(1). Rather, a Final Order was issued which is a final judgment of the ISDA. Furthermore, Idaho Code § 67-5273 and I.R.C.P. 84(b) do not cross-reference with I.R.C.P. 6(e)(1). Idaho Code § 67-5273 and I.R.C.P. 84(b) establish the time frames for filing a petition for judicial review and once an order from an agency becomes final, only a motion for reconsideration may extend the time for filing a petition for

judicial review. I.R.C.P. 6(e)(1) is unrelated to Idaho Code § 67-5273 and I.R.C.P. 84(b) and does not provide the courts the necessary authority to enlarge the filing period for a petition for judicial review. See id. at 176.

### CONCLUSION


The resolution of a jurisdictional question cannot be resolved by entertaining the fairness of the outcome of a decision. Rather, the Court is required to make a determination regarding Petitioners compliance with the applicable statutes. A statutory right to appeal arises only after strict compliance with the provisions of the statute. See 2 Am. Jur. 2d Administrative Law § 405 (2005) (citations omitted). Petitioners have failed to comply with the filing requirements of Idaho Code § 67-5273 and I.R.C.P. 84(b) and as a result have left this Court without jurisdiction to take their case. This Court must dismiss the Petition for Judicial Review for lack of subject matter jurisdiction.

DATED this 28<sup>th</sup> day of September 2005.

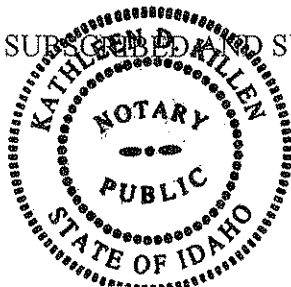
IDAHO STATE DEPARTMENT OF AGRICULTURE

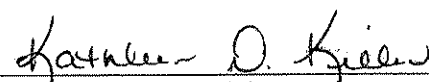
LAWRENCE G. WASDEN  
Attorney General

CLIVE J. STRONG, Deputy Attorney General  
Chief, Division of Natural Resources

  
BRIAN J. OAKEY, Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of September, 2005.



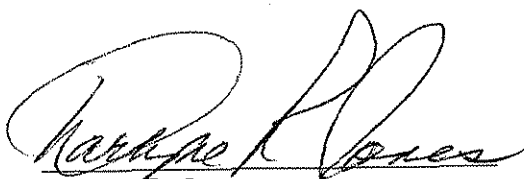
  
Notary Public for Idaho  
Residing at: Boise, Idaho  
Commission Expires: 4-21-2011

### CERTIFICATE OF SERVICE

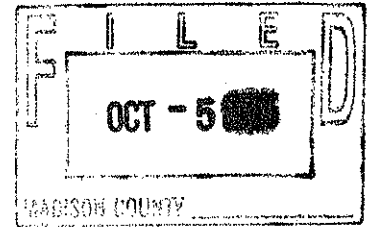
I HEREBY CERTIFY that on this 28 day of September, 2005, a true and correct copy of the foregoing REPLY BRIEF IN SUPPORT OF DISMISSAL OF PETITION FOR JUDICIAL REVIEW was served on the following as indicated below:

Bron M. Rammell  
DIAL, MAY & RAMMELL, chtd.  
216 W. Whitman  
P.O. Box 370  
Pocatello, Idaho 83204-0370

- ☒ United States Mail, Postage Prepaid
- ☐ United States Certified Mail, Return Receipt, Postage Prepaid
- ☐ Facsimile
- ☐ Hand Delivery
- ☐ Overnight Courier

  
Darlyne R. Jones

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR MADISON COUNTY



REX RAMMELL and LYNDA  
RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS,

Petitioner,

v.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

Case No. CV-05-438

MEMORANDUM DECISION RE:  
SUBJECT MATTER JURISDICTION

This court raised, *sue sponte*, the issue of whether it has the requisite subject matter jurisdiction to hear this review. The parties briefed the court on the issue and presented oral argument on October 3, 2005. The court concludes that it lacks subject matter jurisdiction and the petition in the above captioned matter is, therefore, DISMISSED.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Petitioner filed a Petition for Judicial Review on June 10, 2005, in which he seeks review of a "Final Order of the Deputy Director and the underlying Findings of Fact, Conclusions of Law and regulatory and statutory authority of the matter previously heard before the Idaho Department of Agriculture and more particularly identified as Case No. M03-02-04-1130DC."<sup>1</sup> After receipt of the petition, this court issued an Order Governing Procedure on Review in which the governmental agency was ordered to prepare the administrative record and lodge it with the court. After receiving the record, the court observed that the Final Order from which Petitioner sought review was entered and served on May 12, 2005. Twenty-nine (29) days had elapsed between the time Petitioner had filed his Petitioner for Judicial review and the time the final order was issued. The court, being aware that I.C. § 67-5273 and I.R.C.P. 84(b) require the filing of

<sup>1</sup> See Record Petition for Judicial Review, p. 1.

the petition within twenty-eight (28) days after the agency action was ripe for judicial review, questioned whether it had jurisdiction over this case and presented the issue to the parties. The parties briefed the issue and presented oral argument on October 3, 2005.

## **II. STANDARD OF REVIEW**

The Idaho Administrative Procedure Act provides that a petition for judicial review of a final order must be filed within twenty-eight (28) days of the issuance of the final order or, if reconsideration is sought, within twenty-eight (28) days after the decision thereon. I.C. § 67-5273.

## **III. DISCUSSION**

Petitioner proffers two reasons why this court has subject matter jurisdiction in this case: (1) the Respondent's issuance of supplemental orders addressing the amount of attorney's fees awarded extended or tolled the time to file the petition for review and (2) I.R.C.P. rule 6(e)(1) operates to extend the twenty-eight (28) day deadline by three days.

### **A. The Effect of Supplemental Orders**

In the May 12, 2005, Final Order of The Deputy Director, Respondent was awarded costs and fees and was given fourteen days from the service date of the final order to provide a memorandum of costs and fees. The Respondent was further ordered to "issue a Supplemental Final Order for Allowable Costs and Fees Under Idaho Code § 12-117(1) after receiving all parties submissions." The same paragraph ordering the issuance of a supplemental final order for costs and fees also stated that "the future issuance of the Supplemental Final Order does not delay the time for reconsideration of or judicial review of this Final Order."<sup>2</sup> Immediately preceding the certificate of service on the final order are instructions as to when a motion to reconsider or a petition for judicial review must be filed.<sup>3</sup>

In reviewing the language of I.C. § 67-5273 and noting that other jurisdictional time limits are not extended or tolled by filing motions regarding costs and attorneys fees, *see State v. Lawson*, 105 Idaho 164, 165, 667 P.2d 267, 268 (1983); I.A.R. rule 14, this court is forced to conclude that the supplemental orders issued by the Respondent which

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<sup>2</sup> Final Order of the Deputy Director, p. 13.

<sup>3</sup> Final Order of the Deputy Director, p. 13.



solely addressed the amount of costs and attorneys fees already awarded in the final order did not affect any findings of fact, conclusions of law or any judgment in the action below. *See State v. Lawson*, supra. Therefore, review of the final order needed to be sought within twenty-eight (28) days of its issuance.

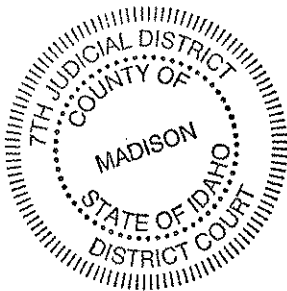
#### **B. The Effect of I.R.C.P. 6(e)(1)**

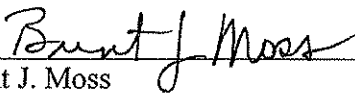
The analysis of this issue is straight forward. The plain meaning interpretation of I.R.C.P. 6(e)(1) and I.C. § 67-5273(2) yields the conclusion that the court may not extend Petitioner's filing time by three days for mail service, *see* I.R.C.P. 6(e)(1), because the twenty-eight day filing period prescribed in I.C. § 67-5273(2) and I.R.C.P. 84(b) runs from the issuance of the final order, rather than its service upon the parties.<sup>4</sup>

#### **IV. CONCLUSION**

Because of the foregoing reasons, this court lacks the subject matter jurisdiction to hear this review. Accordingly, the Petition for Judicial Review filed in this matter is DISMISSED.

Dated this 5 day of October, 2005.



  
Brent J. Moss  
District Judge

<sup>4</sup> The court understands Petitioner's argument concerning the confusion that the language in the agency's final order may cause "a reasonable person" when the agency states that review must be sought within 28 days after the "service" of its order. However, the statutory provisions are clear that the twenty-eight day time frame begins to run upon issuance of the final order and it's the statute that confers jurisdiction upon this court. I.R.C.P. rule 6(e)(1) clearly does not apply in this case because it does not operate to extend a deadline unless a prescribed period begins to run from the "service" of a notice or other paper.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Memorandum Decision was this 5 day of October, 2005, served upon the following individuals via U.S. Mail, postage prepaid:

Bron M. Rammell, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
P.O. Box 370  
Pocatello, ID 83204-0370

Brian J. Oakey  
Deputy Attorney General  
Idaho Department of Agriculture  
P.O. Box 790  
Boise, ID 83701

Clerk of the Court

By: 

\_\_\_\_\_  
Law Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR MADISON COUNTY

REX RAMMELL and LYNDA  
RAMMELL, d/b/a ELK COUNTRY  
TROPHY BULLS,

Petitioner,

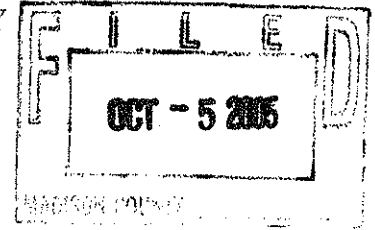
v.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

Case No. CV-05-438

ORDER DISMISSING PETITION

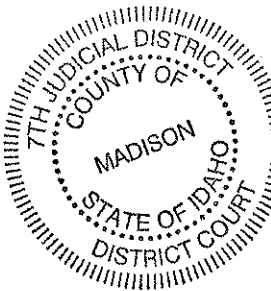


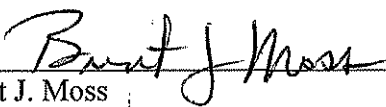
WHEREAS, this Court issues its MEMORANDUM DECISION RE: SUBJECT  
MATTER JURISDICTION,

IT IS HEREBY ORDERED that Petitioner's Petition for Judicial Review is  
DISMISSED.

SO ORDERED.

DATED this 5 day of October, 2005.



  
Brent J. Moss  
District Judge

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ORDER was this 5 day of October, 2005, served upon the following individuals via U.S. Mail, postage prepaid:

Bron M. Rammell, Esq.  
DIAL, MAY & RAMMELL, CHARTERED  
P.O. Box 370  
Pocatello, ID 83204-0370

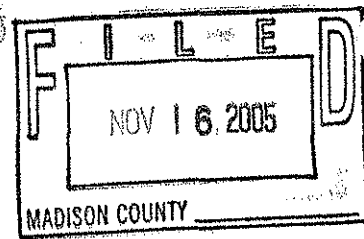
Brian J. Oakey  
Deputy Attorney General  
Idaho Department of Agriculture  
P.O. Box 790  
Boise, ID 83701

Clerk of the Court

By:

  
Law Clerk

Dr. Rex Rammell  
490 Pioneer Rd Apt. 6105  
Rexburg, Idaho 83440  
208-356-3690



IN THE DISTRICT COURT OF THE 7th JUDICIAL DISTRICT OF THE STATE OF IDAHO,  
IN AND FOR THE COUNTY OF MADISON IN THE STATE OF IDAHO

REX RAMMELL and )  
LYNDA RAMMELL, d/b/a )  
ELK COUNTRY TROPHY )  
BULLS, )  
)

Appellants,

Case No.

CV- 2005-438

NOTICE OF APPEAL

VS.

IDAHO STATE  
DEPARTMENT OF  
AGRICULTURE,

Respondent.

TO: THE ABOVE NAMED RESPONDENT, THE IDAHO STATE DEPARTMENT OF AGRICULTURE, AND THE PARTY'S ATTORNEY, MR. BRIAN OAKLEY, DEPUTY ATTORNEY GENERAL, 2270 Old Penitentiary Road, Boise, Idaho 83712, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, REX AND LYNDA RAMMELL, appeals against the above-named respondent to the Idaho Supreme Court from the Order dismissing appellant's Petition for Judicial Review entered in the above-entitled action on the 5th day of October, Honorable Judge Moss presiding.
2. That the party has a right to appeal to the Idaho Supreme Court, and the orders described in paragraph 1 above are appealable orders under and pursuant to Rule (11(a)(2) I.A.R.
3. Preliminarily, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, the issues for which REX AND LYNDA RAMMELL seeks appeal are:

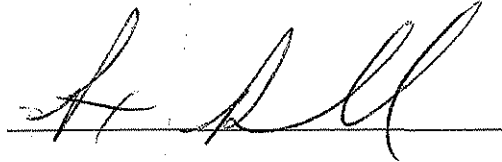
- a) the final order by the State of Idaho correctly stated that the date of issuance of the final order to the defendant was the date of service in accordance with I.R.C.P. 6 (e)(1) and therefore the petition for judicial review was filed timely giving the above court jurisdiction and/or
- b) the supplemental final orders did toll the time to file a petition for judicial review and/or
- c) the Deputy Director failed to hold a hearing on review of attorney's cost and fees denying the appellant due process and making the case unripe for judicial review.

4. The appellants request the preparation of the entire reporter's transcript including the party's briefs, oral arguments, pre and post orders. In addition, the appellants requests all documents and exhibits lodged with the 7<sup>th</sup> District Court in the above entitled case as well as all documents and exhibits not lodged with the Court that were part of administrative case # M03-02-04-1130DC to be included.

5. I certify:

- (a) that a copy of this notice of appeal has been served on the reporter.
- (b) that the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript.
- (c) that the appellate filing fee has been paid.
- (d) that service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to § 67-1401(1), Idaho Code.

DATED THIS 16th day of November, 2005.



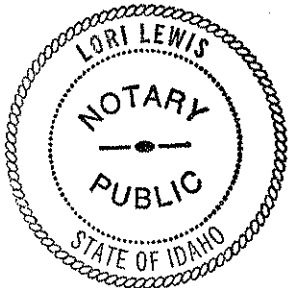
State of Idaho                     )  
  ) ss.  
County of                         )  
Madison \_\_\_\_\_

Rex Rammell, being sworn, deposes and says:  
That the party is the appellant in the above-entitled appeal, and that all statements in this  
notice of appeal are true and correct to the best of his or her knowledge and belief.

[Signature]

Subscribed and Sworn to before me this 16 day of NOV., 2005

(SEAL)



[Signature]

# AFFIDAVIT OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of November, 2005, a true and correct copy of the foregoing NOTICE OF APPEAL was served on the following as indicated below:

## PERSON SERVED

Mr. Brian J. Oakey  
Deputy Attorney General  
Idaho State Department of Agriculture  
P.O. Box 790  
Boise, Idaho 83701-0790

Mr. David Marlow  
159 E. Main  
Rexburg, Idaho 83440

Office of Attorney General  
700 W. Jefferson Street  
P.O. Box 83720  
Boise, ID 83720

STATE OF IDAHO )

COUNTY OF Madison )

## SERVICE

Hand Delivery ( )

Facsimile Transmission ( )

Mailing – United States Mail  
Postage Prepaid ( X )

Hand Delivery (x)

Facsimile Transmission ( )  
Mailing – United States Mail ( )

Hand Delivery ( )

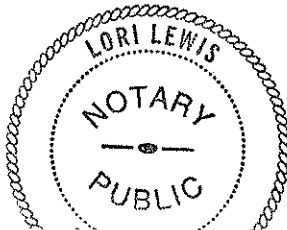
Facsimile Transmission ( )

Mailing – United States Mail  
Postage Prepaid ( X )

*[Handwritten signatures]*

SUBSCRIBED and sworn to before me

This 16<sup>th</sup> day of November 2005, at Rexburg, Idaho.



*[Handwritten signature]*  
Notary Public



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REX RAMMELL and LYNDA )  
RAMMELL, d/b/a ELK )  
COUNTRY TROPHY BULLS, )

Plaintiffs-Appellants )

vs )

IDAHO STATE )  
DEPARTMENT OF )  
AGRICULTURE )

Defendant-Respondent )

SUPREME COURT NO.  
CASE NO. CV-2005-438

CLERK'S CERTIFICATE OF  
APPEAL

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APPEAL FROM: 7<sup>th</sup> Judicial District Madison County

HONORABLE Brent J Moss PRESIDING

CASE NO. FROM COURT: Cv-2005-438

ORDER OF JUDGMENT APPEALED FROM: Order Dismissing Appellant's Petition for  
Judicial Review, Dated October 5<sup>th</sup>, 2005

ATTORNEY FOR APPELLANT: Pro Se

ATTORNEY FOR THE RESPONDENT: Brian J Oakey, Deputy Attorney General, Idaho  
State Department of Agriculture, PO Box 790, Boise, ID 83701-0790

APPEALED BY: Rex Rammell

APPEALED AGAINST: Idaho State Department of Agriculture

NOTICE OF APPEAL FILED: November 16, 2005

AMENDED NOTICE OF APPEAL FILED: N/A

NOTICE OF CROSS-APPEAL FILED: N/A

AMENDED NOTICE OF CROSS-APPEAL FILED: N/A

APPELLATE FEE PAID: Yes


RESPONDENT OR CROSS RESPONDENT'S REQUEST FOR ADDITIONAL RECORD:  
N/A

WAS DISTRICT COURT REPORTER'S TRANSCRIPT REQUESTED?: Yes

IF SO, NAME OF REPORTER: David Marlow

Dated this <sup>14</sup>~~30~~ day of Nov, 2005

Marilyn R. Rasmussen

BY 

DEPUTY CLERK

**STATE OF IDAHO**  
**SUPREME COURT      COURT OF APPEALS**



Stephen W. Kenyon  
Clerk of the Court

Lois Dawson  
Chief Deputy Clerk

Supreme Court Building  
P.O. Box 83720  
Boise, Idaho 83720-0101  
(208) 334-2210

December 6, 2005

Dr. Rex Rammell  
490 Pioneer Rd Apt 6105  
Rexburg, ID 83440

RE: Supreme Court No. 32538  
RAMMELL v. DEPT. OF AGRICULTURE

Dear Mr. Rammell;

A Notice of Appeal was filed in this Court December 2, 2005. The Notice of Appeal title lists you as appearing for yourself, Lynda Rammell and Elk Country Trophy Bulls. The Secretary of State advised this Court that you and Lynda are sole owners of Elk Country Trophy Bulls. Since you are not an attorney admitted to the Bar of this Court, you may represent yourself and your business, but not Lynda Rammell. However, you can present oral argument on behalf of the business, as it relates to the inclusion of Lynda Rammell in the business.

If Lynda Rammell intends to participate in this appeal in any manner, it will be necessary that an Amended Notice of Appeal is filed which bears her signature along with your signature. Likewise, all subsequent documents or briefs filed in this Court will need to bear both signatures. Otherwise, Lynda will not be able to participate in briefing and may not appear further in this appeal, including oral argument. However, her name will remain in the title of the appeal.

If an Amended Notice of Appeal, bearing your signature and Lynda Rammell's signature, is not filed within the next fourteen (14) days, this Court will assume that Lynda Rammell will not be participating in the appeal process, however, her name will remain in the title.

An Amended Notice of Appeal should be filed in the District Court, but no additional filing fee is required.

Sincerely,

A handwritten signature in black ink, reading "Stephen Kenyon". The signature is fluid and cursive, with the first name "Stephen" and last name "Kenyon" clearly distinguishable.

Stephen W. Kenyon  
Clerk of the Courts

cc: Counsel of Record  
District Court Clerk  
District Court Judge  
District Court Reporter

# In the Supreme Court of the State of Idaho

REX RAMMELL and LYNDA RAMMELL  
d/b/a ELK COUNTRY TROPHY BULLS,

Petitioners-Appellants,

v.

IDAHO STATE DEPARTMENT OF  
AGRICULTURE,

Respondent.

ORDER

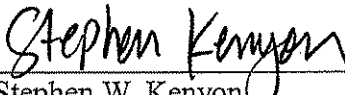
Supreme Court No. 32538

A letter was sent to Petitioners on December 2, 2005 advising that an Amended Notice of Appeal should be filed, within fourteen (14) days from the date of the letter, bearing Lynda Rammell's signature if she intended to participate in this appeal regarding briefing and oral argument. This Court having been advised that an Amended Notice of Appeal has not been filed; therefore, good cause appearing,

IT HEREBY IS ORDER that Lynda Rammell may not participate in any briefing and may not appear further in this appeal, including oral argument; however, Lynda Rammell's name will remain in the title as an Appellant.

IT FURTHER IS ORDERED that Rex Rammell may represent himself and Elk Country Trophy Bulls, but may not represent Lynda Rammell except as it relates to the inclusion of Lynda Rammell in the business.

DATED this 9<sup>th</sup> day of January 2006. For the Supreme Court

  
Stephen W. Kenyon  
Clerk of the Courts

cc: Counsel of Record  
District Court Clerk  
District Court Judge  
District Court Reporter

REX RAMMELL, LYNDA RAMMELL  
dba ELK COUNTRY TROPHY BULLS

PLAINTIFF-  
APPELLANTS

VS

IDAHO STATE DEPARTMENT OF  
AGRICULTURE

DEFENDANT-  
RESPONDENT

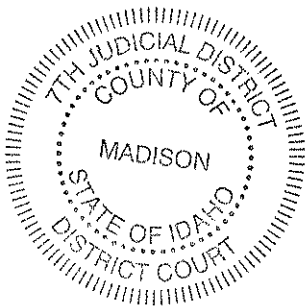
SUPREME COURT NO. 32538  
CASE NO. CV-2005-438

CERTIFICATE OF EXHIBITS

NO.	DESCRIPTION	SENT/RETAINED
1	TRANSCRIPT FROM ADMINISTRATIVE RECORD DATED DECEMBER 15, 2004	SENT
2	TRANSCRIPT FROM ADMINISTRATIVE RECORD DATED DECEMBER 16, 2004	SENT
3	TRANSCRIPT FROM ADMINISTRATIVE RECORD DATED DECEMBER 30, 2004	SENT
4	TRANSCRIPT FROM ADMINISTRATIVE RECORD DATED APRIL 29, 2005	SENT
5	TRANSCRIPT FROM ADMINISTRATIVE RECORD DATED JUNE 21, 2005	SENT
6	ADMINISTRATIVE RECORD (4 FOLDING FILES)	SENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this  
27 day of Jan, 2006

MARILYN R. RASMUSSEN  
CLERK OF THE DISTRICT COURT



By 

Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REX RAMMELL, LYNDA RAMMELL  
dba ELK COUNTRY TROPHY BULLS

PLAINTIFF-  
APPELLANTS

VS

IDAHO STATE DEPARTMENT OF  
AGRICULTURE

DEFENDANT-  
RESPONDENT

CERTIFICATE OF SERVICE  
CASE NO. CV-05-438  
SUPREME COURT NO. 32538

I, Gwen Cureton, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Madison, do hereby certify that I have personally served or mailed, by United States Mail, postage prepaid, one copy of the Clerk's Record and any Reporter's Transcript to each of the parties or their Attorney of Record as follows:

PRO-SE  
DR. REX RAMMELL  
490 PIONEER RD. APT 6105  
REXBURG, ID 83440

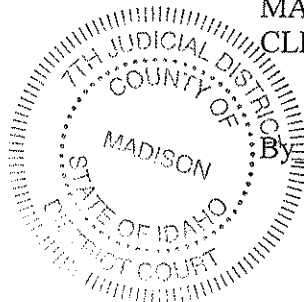
ATTORNEY FOR APPELLANT

BRIAN J. OAKLEY  
IDAHO STATE DEPARTMENT  
OF AGRICULTURE  
PO BOX 790  
BOISE, ID 83701-0790

ATTORNEY FOR RESPONDENT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the  
seal of the said Court this 27 day of Jan, 2006

MARILYN R. RASMUSSEN  
CLERK OF THE DISTRICT COURT



By [Signature]  
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

REX RAMMELL, LYNDA RAMMELL )  
dba ELK COUNTRY TROPHY BULLS )

PLAINTIFF )  
APPELLANTS )

VS )

IDAHO STATE DEPARTMENT OF )  
AGRICULTURE )

DEFENDANT- )  
RESPONDENT )

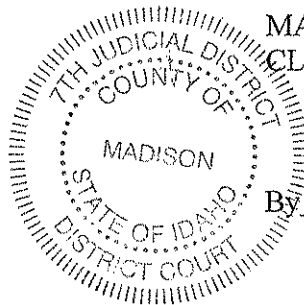
CLERK'S CERTIFICATE

SUPREME COURT NO. 32538  
CASE NO. CV-05-438

I, Marilyn R. Rasmussen, Clerk of the District Court of the 7<sup>th</sup> Judicial District of the State of Idaho, in and for the County of Madison, do hereby certify that the foregoing Clerk's Record in the above entitled cause was compiled and bound under my direction and contains true and correct copies of all pleadings, documents and papers designated to be included under Rule 28, IAR, the Notice of Appeal, any Notice of Cross Appeal, and any additional documents requested to be included.

I further certify that all documents, x-rays, charts and pictures offered or admitted as exhibits in the above entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record (except for exhibits, which are retained in the possession of the undersigned), as required by Rule 31 of the Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 27 day of Jan, 2006.



MARILYN R. RASMUSSEN  
CLERK OF THE DISTRICT COURT

By 

Deputy Clerk